

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD GOSZTYLA,

Plaintiff,

v.

FRENCH, et al.,

Defendants.

No. 2:21-cv-01403-DJC-EFB (PC)

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. Plaintiff alleges that, on March 9, 2018, Defendants, who are four Sacramento County Deputy Sheriffs, “stormed” his residence, kicked in the bedroom door occupied by Plaintiff and his wife, and ordered Plaintiff to the ground. (ECF No. 39.) Plaintiff alleges the Defendants proceeded to assault him while he lay on the ground, causing Plaintiff serious injury. (*Id.*)

The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On February 16, 2023, Defendants filed a motion for summary judgment. (ECF No. 52.) On August 7, 2023, the Magistrate Judge filed findings and recommendations herein which were served on all Parties and notified them that any objections to the findings and recommendations must be filed within fourteen days. (ECF No. 56.) The Magistrate Judge recommended that Defendants’ motion for summary judgment be granted on the ground that Plaintiff’s complaint is time-barred. (*Id.*) Plaintiff filed objections (ECF No. 57), and Defendants filed a response to those objections (ECF Nos. 60, 61).

1 Plaintiff filed this action on August 6, 2021, suing Defendants for excessive
2 force under section 1983. (ECF No. 1.) “For actions under 42 U.S.C. § 1983, courts
3 apply the forum state’s statute of limitations for personal injury actions, along with the
4 forum state’s law regarding tolling, including equitable tolling, except to the extent
5 any of these laws is inconsistent with federal law.” *Jones v. Blanas*, 393 F.3d 918, 927
6 (9th Cir. 2004). “California’s statute of limitations for personal injury claims is two
7 years.” *Butler v. Nat’l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014).
8 It is undisputed that Plaintiff’s cause of action accrued on March 9, 2018. Plaintiff filed
9 his complaint more than two years after his claim accrued. Accordingly, Plaintiff’s
10 claim is time-barred unless they are subject to any applicable tolling.

11 The Magistrate Judge found Plaintiff’s claims were not subject to tolling. (See
12 ECF No. 56.) Of note, the Magistrate Judge found that Plaintiff was not entitled to
13 tolling pursuant to California Code of Civil Procedure § 352.1(a), which permits tolling
14 for the disability of incarceration. (*Id.* at 6–8.) That section provides “[i]f a person
15 entitled to bring an action . . . is, at the time the cause of action accrued, imprisoned
16 on a criminal charge, or in execution under the sentence of a criminal court for a term
17 less than for life, the time of that disability is not a part of the time limited for the
18 commencement of the action, not to exceed two years.” Cal. Code Civ. Proc. §
19 352.1(a). Thus, a prisoner serving a term less than life in California may have four
20 years to file a federal section 1983 claim. See *Cato v. Durst*, No. 2:17-cv-1873-TLN-
21 EFB P, 2019 WL 2249636, * 2 (E.D. Cal. May 23, 2019).

22 The Ninth Circuit previously held that a person “held in police custody prior to
23 arraignment is faced with the same limitations as someone in custody after
24 arraignment . . . [thus] actual, uninterrupted incarceration is the touchstone for
25 assessing tolling under § 352(a)(3) [the precursor to § 352.1(a)], which covers all post-
26 arrest custody.” *Elliott v. Union City*, 25 F.3d 800, 803 (9th Cir. 1994) (quotations
27 omitted). Thus, under *Elliott*, a plaintiff held in continuous pre-trial custody following
28 arrest could benefit from tolling pursuant to section 352.1(a).

1 Post-*Elliott*, however, the California Court of Appeal held that tolling under
2 section 352.1(a) is only available if the plaintiff is serving a term of imprisonment “in
3 the state prison” at the time of accrual. *Austin v. Medicis*, 21 Cal. App. 5th 577, 582
4 (2018), *reh’g denied* Apr. 11, 2018, *review denied* June 13, 2018. The appellate court
5 specifically held that pre-trial custody in a county jail does not render an arrestee
6 “imprisoned on a criminal charge” under section 352.1(a). *Id.* at 597.

7 The Magistrate Judge applied the holding in *Austin* to find that the Plaintiff was
8 not entitled to tolling under section 352.1(a), reasoning: (1) where there is no
9 convincing evidence that a state supreme court would decide differently, a federal
10 court is obligated to follow the decisions of the state’s intermediate appellate courts;
11 (2) there was no post-*Austin* opinion from the Ninth Circuit indicating the California
12 Supreme Court would decide differently; and (3) the court was unaware of any other
13 evidence that the California Supreme Court would decide differently than *Austin*.
14 (ECF No. 56 at 7-8.) In making this determination, the Magistrate Judge noted that
15 the Ninth Circuit had issued two unpublished decisions relying on *Austin*’s holding
16 that a pre-trial detainee is not entitled to the statutory tolling available under section
17 352.1(a). See *Shaw v. Sacramento Cnty. Sheriff’s Dep’t*, 810 Fed. App’x 553, 554 (9th
18 Cir. 2020); *Darbouze v. Christopher*, No. 21-55133, 2022 WL 1769794, at *1 (9th Cir.
19 June 1, 2022). Thus, because Plaintiff’s cause of action accrued while he was arrested
20 in his home, and not while imprisoned, the Magistrate Judge found section 352.1(a)
21 tolling did not apply.

22 However, after the findings and recommendations were issued, the Ninth
23 Circuit issued a detailed new opinion which analyzed the appellate court’s reasoning
24 in *Austin*, and held that *Elliott*, not *Austin*, continues to control in federal court because
25 “[c]onvincing evidence exists that the California Supreme Court, in interpreting
26 § 352.1(a), would not follow *Austin*.” See *Mosteiro v. Simmons*, No. 22-16780, 2023
27 WL 5695998, at *2 (9th Cir. Sept. 5, 2023). Since *Mosteiro* was issued, district courts
28 have applied *Elliott* when analyzing tolling. See *Frias v. County of San Diego*, No.

1 3:22-CV-00675-JO-AHG, 2023 WL 8285195 (S.D. Cal. Nov. 29, 2023); *Robinson v.*
2 *County of San Bernardino*, No. EDCV 23-0836-DMG-PVC, 2023 WL 9420507, at *10
3 n.6 (C.D. Cal. Sept. 26, 2023).

4 *Mosteiro* is in tension with the Magistrate Judge's holding that *Austin*, not
5 *Elliott*, is the applicable authority here. However, neither the Magistrate Judge nor the
6 Parties had the benefit of *Mosteiro* when briefing summary judgment. Accordingly,
7 this Court will order the Parties to submit supplemental briefing addressing *Mosteiro*
8 and its impact on summary judgment.

9 This Court also notes that it is unclear whether Plaintiff would benefit from
10 section 352.1(a) tolling even if *Elliott* applies because Plaintiff has not alleged whether
11 he was in continuous custody following his arrest on March 9, 2018. The Court will
12 order Plaintiff to address this fact in his supplemental briefing as well.

13 In accordance with the above, it is hereby ORDERED:

- 14 1. Plaintiff shall file a supplemental brief within twenty-one (21) days of this
15 Order addressing the impact of *Mosteiro v. Simmons*, No. 22-16780, 2023
16 WL 5695998 (9th Cir. Sept. 5, 2023) on Defendants' Motion for Summary
17 Judgment (ECF No. 52). Plaintiff shall also clarify whether he was in
18 continuous custody following his arrest on March 9, 2018. Plaintiff's
19 supplemental brief shall be limited to five (5) pages.
- 20 2. Defendants are granted leave to file an opposition to Plaintiff's
21 supplemental brief within fourteen (14) days of the date the supplemental
22 brief is filed. Defendants' opposition shall be limited to five (5) pages.
- 23 3. Plaintiff is granted leave to file a reply to Defendants' opposition within ten
24 (10) days of the date the opposition is filed. The reply shall be limited to five
25 (5) pages.

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1 4. Once all supplemental briefs are filed, this matter will be deemed
2 submitted, and the Court will issue a ruling on the findings and
3 recommendations in due course.

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5 IT IS SO ORDERED.

6 Dated: **April 30, 2024**


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE